

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 518 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIDEVI D/O. JUGALKISHOR MAHVIRPRASAD SWAMI

Versus

STATE OF GUJARAT

Appearance:

MR S.R.DIVETIA FOR MR. RAJESH M AGRAWAL for Petitioners
Mr.H.H.PATEL, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 19/06/2001

ORAL JUDGEMENT

1. This Revision is directed against the order dated 25.8.2000 of Shri S.D.Dave, Principal Judge, Court No.1, rejecting the discharge application given by the two accused u/s.227 of the Code of Criminal Procedure.

2. Shri S.R.Divetia for Shri R.M.Agrawal, appears for the revisionist and Shri H.H.Patel, learned A.P.P. for the respondent.

3. Shri Divetia states that in view of some evidence coming in the nature of test identification evidence against accused No.2, namely, Rajendrakumar @ Raju Jugalkishor Swami, he does not press this revision on behalf of revisionist No.2. He, however, presses the revision on behalf of Laxmidevi, revisionist No.1.

4. The impugned order of Principal Judge has been examined. It is surprising that the Principal Judge has rejected discharge application of Smt. Laxmidevi, revisionist No.1, who was accused No.1 before him, despite concession made by Shri V.P.Atre, A.P.P. before him that there is nothing on record to show any complexity of accused No.1 in the alleged offence. Time was given to Shri S.T.Mehta, the then learned A.P.P. appearing in this revision to verify as to what material was there against the revisionist No.1 for proceeding against her u/s.120(B), 394, 397 I.P.Code and Section 135(1) of the Bombay Police Act.

5. Today Shri Patel states that there is no material against this lady revisionist under the aforesaid sections. He, however, argued that the offence of conspiracy can be pressed against the revisionist No.1. I am however unable to accept this contention because for punishing for the offence punishable u/s.120(B) I.P. Code some evidence, even in the nature of circumstantial evidence, is required. No circumstantial evidence has been pointed out to me from the record. As such the Principal Judge was manifestly in error in not accepting the concession of the learned A.P.P. that there was no evidence against the revisionist and is rejecting the discharge application on mere surmises and conjectures.

6. In view of the aforesaid discussions the revision is partly allowed. The impugned order against the revisionist No.1 Laxmidevi is set aside. She is discharged of the offences for which she was proposed to be tried.

sd/-

Date : June 19, 2001 (D. C. Srivastava, J.)

sas